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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

DONALD R. CAMERON, *et al.*
Plaintiffs
v.
APPLE INC.,
Defendant.

Case No. 4:19-cv-03074-YGR

**DECLARATION OF RACHEL S. BRASS IN
SUPPORT OF DEFENDANT APPLE INC.'S
OPPOSITION TO DEVELOPER
PLAINTIFFS' MOTION FOR CLASS
CERTIFICATION AND DEFENDANT
APPLE INC.'S MOTION TO EXCLUDE
TESTIMONY OF PROFESSOR EINER
ELHAUGE, PROFESSOR NICHOLAS
ECONOMIDES, AND CHRISTIAN
TREGILLIS**

The Honorable Yvonne Gonzalez Rogers

Date: Nov. 16, 2021
Time: 10:00 a.m.
Courtroom: 1, 4th Floor

DECLARATION OF RACHEL S. BRASS IN SUPPORT OF DEFENDANT APPLE INC.'S OPPOSITION TO
DEVELOPER PLAINTIFFS' MOTION FOR CLASS CERTIFICATION AND DEFENDANT APPLE INC.'S MOTION
TO EXCLUDE TESTIMONY OF PROFESSOR EINER ELHAUGE, PROFESSOR NICHOLAS ECONOMIDES, AND
CHRISTIAN TREGILLIS, CASE NO. 4:19-CV-03074-YGR

I hereby declare as follows:

1. I am an attorney licensed to practice in the State of California, and a member of the Bar of this Court. I am a partner at the law firm Gibson, Dunn & Crutcher LLP, counsel of record for Defendant Apple Inc. (“Apple”) in this case. I submit this declaration in support of Apple’s Opposition to Developer Plaintiffs’ Motion for Class Certification and Apple’s Motion to Exclude Testimony of Professor Einer Elhauge, Professor Nicholas Economides, and Christian Tregillis.

2. Attached hereto as **Exhibit 1** is a true and correct copy of excerpts of the June 25, 2021 deposition of Donald Cameron noticed and taken in this matter.

3. Attached hereto as **Exhibit 2** is a true and correct copy of excerpts of the transcript of trial testimony of Timothy Cook given in the trial of *Epic Games, Inc. v. Apple Inc.*, 4:20-cv-05640-YGR-TSH on May 21, 2020.

4. Attached hereto as **Exhibit 3** is a true and correct copy of excerpts of the February 12, 2021 deposition of Timothy Cook, noticed and taken in this matter.

5. Attached hereto as **Exhibit 4** is a true and correct copy of of the February 8, 2021 deposition of Eddy Cue, noticed and taken in this matter.

6. Attached hereto as **Exhibit 5** is a true and correct copy of excerpts of the June 17, 2021 deposition of Richard Czeslawski, noticed and taken in this matter.

7. Attached hereto as **Exhibit 6** is a true and correct copy of the August 4, 2021 deposition of Nicholas Economides, noticed and taken in this matter. Apple files herewith a Daubert Motion to Exclude Testimony of Nicholas Economides, and submits his testimony in support of that Motion and, to the extent his opinions are found admissible, for purposes of impeachment. By submitting the transcript of his deposition testimony herewith, however, Apple does not concede that Economides’s deposition testimony or the opinions in his expert report constitute admissible evidence.

8. Attached hereto as **Exhibit 7** is a true and correct copy of the July 30, 2021 deposition of Einer Elhauge, noticed and taken in this matter. Apple files herewith a Daubert Motion to Exclude Testimony of Einer Elhauge, and submits his testimony in support of that Motion and, to the extent his opinions are found admissible, for purposes of impeachment. By submitting the transcript of his

1 deposition testimony herewith, however, Apple does not concede that Elhauge's deposition testimony
2 or the opinions in his expert report constitute admissible evidence.

3 9. Attached hereto as **Exhibit 8** is a true and correct copy of excerpts of the transcript of
4 trial testimony of Matthew Fischer given in the trial of *Epic Games, Inc. v. Apple Inc.*, 4:20-cv-05640-
5 YGR-TSH on May 6, 2021.

6 10. Attached hereto as **Exhibit 9** is a true and correct copy of excerpts of the May 22, 2020
7 deposition of Edward Hayter, noticed and taken in this matter.

8 11. Attached hereto as **Exhibit 10** is a true and correct copy of excerpts of the July 23, 2020
9 deposition of Edward Lawrence, noticed and taken in this matter.

10 12. Attached hereto as **Exhibit 11** is a true and correct copy of excerpts of the February 24,
11 2021 deposition of Adrian Ong, noticed and dated in this matter.

12 13. Attached hereto as **Exhibit 12** is a true and correct copy of excerpts of the transcript of
13 trial testimony of Philip Schiller given in the trial of *Epic Games, Inc. v. Apple Inc.*, 4:20-cv-05640-
14 YGR-TSH on May 17-19, 2020.

15 14. Attached hereto as **Exhibit 13** is a true and correct copy of excerpts of the two-day,
16 February 11 and 15, 2021 deposition of Philip Schiller, noticed and taken in this matter.

17 15. Attached hereto as **Exhibit 14** is a true and correct copy of excerpts of the February 15,
18 2021 deposition of Michael Schmid, noticed and taken in this matter.

19 16. Attached hereto as **Exhibit 15** is a true and correct copy of excerpts of the June 16, 2021
20 deposition of Stephen Schwartz, noticed and taken in this matter.

21 17. Attached hereto as **Exhibit 16** is a true and correct copy of excerpts of the April 23,
22 2021 deposition of Benjamin Simon, noticed and taken in this matter.

23 18. Attached hereto as **Exhibit 17** is a true and correct copy of excerpts of the transcript of
24 trial testimony of Timothy Sweeney given in the trial of *Epic Games, Inc. v. Apple Inc.*, 4:20-cv-05640-
25 YGR-TSH on May 3-4, 2021.

26 19. Attached hereto as **Exhibit 18** is a true and correct copy of excerpts of the February 8,
27 2021 deposition of Timothy Sweeney, noticed and taken in this matter.

20. Attached hereto as **Exhibit 19** is a true and correct copy of excerpts of the August 2, 2021 deposition of Christian Tregillis, noticed and taken in this matter.

21. Attached hereto as **Exhibit 20** is a true and correct copy of a document titled “Amazon Developer Services Agreement” produced in this litigation with a Bates label of AMZN000000755.

22. Attached hereto as **Exhibit 21** is a true and correct copy of the study “How Large Is the Apple App Store Ecosystem? A Global Perspective for 2019” published by Analysis Group on June 15, 2020, available at <https://www.apple.com/newsroom/pdfs/app-store-study-2019.pdf> (and marked in the trial of *Epic Games, Inc. v. Apple Inc.*, 4:20-cv-05640-YGR-TSH as DX-3181).

23. Attached hereto as **Exhibit 22** is a true and correct copy of Schedule 2 to the Apple Developer Program License Agreement produced in this litigation with a Bates label of APL-APPSTORE_10137343 (and marked in the trial of *Epic Games, Inc. v. Apple Inc.*, 4:20-cv-05640-YGR-TSH as DX-3256).

24. Attached hereto as **Exhibit 23** is a true and correct copy of the Apple Developer Program License Agreement produced in this litigation with a Bates label of APL-APPSTORE_10335359 (and marked in the trial of *Epic Games, Inc. v. Apple Inc.*, 4:20-cv-05640-YGR-TSH as DX-3352).

25. Attached hereto as **Exhibit 24** is a true and correct copy of a document titled “Apple Video Partner Program” produced in this litigation with a Bates label of APL-EG_07868683 (and marked in the trial of *Epic Games, Inc. v. Apple Inc.*, 4:20-cv-05640-YGR-TSH as DX-3421).

26. Attached hereto as **Exhibit 25** is a true and correct copy of a document titled “Epic Games Store Presentation to the Board of Directors” produced in this litigation with a Bates label of EPIC_00127298 (and marked in the trial of *Epic Games, Inc. v. Apple Inc.*, 4:20-cv-05640-YGR-TSH as DX-3955).

27. Attached hereto as **Exhibit 26** is a true and correct copy of a transcript of the June 9, 2008 Keynote produced in this litigation with a Bates label of APL-APPSTORE_00029588 (and marked in the trial of *Epic Games, Inc. v. Apple Inc.*, 4:20-cv-05640-YGR-TSH as DX-4135).

28. Attached hereto as **Exhibit 27** is a true and correct copy of a document titled “App Store Business Program” produced in this litigation with a Bates label of APL-EG_10248340 (and marked in the trial of *Epic Games, Inc. v. Apple Inc.*, 4:20-cv-05640-YGR-TSH as DX-4168).

29. Attached hereto as **Exhibit 28** is a true and correct copy of the App Store Review Guidelines produced in this litigation with a Bates label of APL-APPSTORE_09806130 (and marked in the trial of *Epic Games, Inc. v. Apple Inc.*, 4:20-cv-05640-YGR-TSH as DX-4338).

30. Attached hereto as **Exhibit 29** is a true and correct copy of a presentation at Google produced in this litigation with a Bates label of GOOG-APPL-00100290 (and marked in the trial of *Epic Games, Inc. v. Apple Inc.*, 4:20-cv-05640-YGR-TSH as DX-5324).

31. Attached hereto as **Exhibit 30** is a true and correct copy of the article “New Revenue Share Tiers and other updates to the Steam Distribution Agreement,” published by Steam on November 30, 2018 and available at <https://steamcommunity.com/groups/steamworks/announcements/detail/1697191267930157838> (last accessed on Aug. 10, 2021).

32. Attached hereto as **Exhibit 31** is a true and correct copy of an email exchange between Donald Cameron, Liu Xinjun, Mark Edelsberg, and Pritesh Shah dated July 28-29, 2015 produced in this litigation with a Bates label of LBN_0000277.

33. Attached hereto as **Exhibit 32** is a true and correct copy of the App Analytics page for Lil’ BabyNames produced in this litigation with a Bates label of LBN_0002544.

34. Attached hereto as **Exhibit 33** is a true and correct copy of a transcript of the March 6, 2008 iPhone SDK Launch produced in this litigation with a Bates label of APL-APPSTORE_00000055 (and marked in the trial of *Epic Games, Inc. v. Apple Inc.*, 4:20-cv-05640-YGR-TSH as PX-0880).

35. Attached hereto as **Exhibit 34** is a true and correct copy of the Apple Developer Agreement (and marked in the trial of *Epic Games, Inc. v. Apple Inc.*, 4:20-cv-05640-YGR-TSH as PX-2618).

36. Attached hereto as **Exhibit 35** is a true and correct copy of a document titled “Terms and Conditions” produced in this litigation with a Bates label of SEA_00041531.

6

DECLARATION OF RACHEL S. BRASS IN SUPPORT OF DEFENDANT APPLE INC.'S OPPOSITION TO
DEVELOPER PLAINTIFFS' MOTION FOR CLASS CERTIFICATION AND DEFENDANT APPLE INC.'S MOTION
TO EXCLUDE TESTIMONY OF PROFESSOR EINER ELHAUGE, PROFESSOR NICHOLAS ECONOMIDES, AND
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